

## **MINUTES OF THE CITY COUNCIL**

**SAN JOSE, CALIFORNIA**

**TUESDAY, MAY 18, 2004**

The Council of the City of San Jose convened in Regular Session at 9:34 a.m. in Council Chambers at City Hall.

Present: Council Members: Campos, Chavez, Chirco, Cortese, Dando, Gregory, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members: None.

Upon motion unanimously adopted, the City Council recessed to Closed Session at 9:34 a.m. in Room 600 to (A) confer with Real Property designated representatives pursuant to Government Code Section 54956.8: Property – 5600 Cottle Road, Designated Representatives: Ed Shikada for the City of San José and Stephen F. McLaughlin for Hitachi Global Storage Technologies, Inc., Under Negotiations of price and terms of payment for purchase of all or part of parcel. (B) confer with Legal Counsel regarding existing litigation pursuant to Government Code Section 54956.9 Subsection (a) to consider cases of Amelia Reid Aviation, et al. v. City of San José, et al, Bui, et al. v. City of San José, et al., Chesney v. City of San José, City of San José and People of the State of California v. Alvarez, et al., City of San José v. American GI Forum, City of San José v. Arcadia Development Co., et al., City of San José v. Caltrans, City of San José v. JMP Golf Design Group, Inc., City of San José v. Movassate, Comcast Corporation v. City of San José, Cripe, et al. v. City of San José, Doe v. Doe, Dubray v. City of San José, Emergency Consulting & Research Center v. City of San José, Fisher v. City of San José, Fong, et al. v. City of San José, et al., Garden City v. City of San José, Goodman v. City of San José, Great Oaks Water Company v. City of San José, Gresham v. City of San José, Hells Angels, et al. v. City of San José, et al., Hernandez, et al. v. City of San José, et al., Horta v. City of San José, Jorge Albert Sanchez v. City of San José, Mario Sanchez v. City of San José, Martinez v. City of San José, MHC v. City of San José, Miller v. City of San José, Morris, et al. v. City of San José, et al., Muscatell v. City of San José, Nguyen v. City of San José, et al., People of the State of California, ex rel. San José City Attorney v. VST, et al., Piazza v. City of San José, Preservation Action Council of San José v. City of San José, et al., Preservation Action Council of San José v. City of San José, et al., Proposition 22 Legal Defense & Education Fund, et al. v. Gonzales, et al., San Francisco Baykeeper v. California State Water Resources Control Board, City of San José, et al., Smith v. City of San José, Sutter's Place v. City of San José, Tow Service, et al. v. City of San José, et al., Travelers Property Casualty v. City of San José, U.S. Glass v. S.J. Amoroso, et al., Williams v. City of San José, Wood V. Montalvo, et al., (B) to confer with Legal Counsel regarding anticipated litigation (a) of two matters where there is significant exposure to litigation pursuant to subsection (b) of Section 54956.9 of the Government Code and (2) to discuss two matters in the initiation of litigation pursuant to subsection (c) of Section 54956.9 of the Government Code.

By unanimous consent, Council reconvened from Closed Session and recessed at 10:41 a.m. and reconvened at 1:39 p.m. in Council Chambers, City Hall.

Present: Council Members: Campos, Chavez, Chirco, Cortese, Dando, Gregory, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members: None.

### **INVOCATION (DISTRICT 5)**

The Alum Rock Jazz Program performed "Route 66".

### **PLEDGE OF ALLEGIANCE**

Mayor Gonzales led the Pledge of Allegiance.

### **ORDERS OF THE DAY**

Upon motion by Council Member Dando, seconded by Council Member Chavez, and unanimously carried, the Order of the Day and the Amended Agenda were approved. (11-0).

### **CEREMONIAL ITEMS**

**1.2 Presentation of a commendation to Bill Nicolosi, Director, Alum Rock Jazz Program. (Campos)**

Action: Mayor Gonzales and Council Member Campos presented a commendation to Bill Nicolosi, Director of the Alum Rock Jazz Program for inspiring students.

**1.5 Presentation of a commendation to SCORE (Senior Corps of Retired Executives), recognizing their 27 years of service in San José. (Mayor) (Rules Committee referral 5/12/04)**

Action: Mayor Gonzales presented a commendation to Wally Dale, Lori Trippel, Nev Griffin, Tony Barbella, Mike Strozza and Bob Goedjen of SCORE (Senior Corps of Retired Executives) in recognition of 27 years of service in San Jose.

**1.7 Presentation of a commendation to Helen Hansen for her many years of dedication to our community and especially her instrumental work with John XXII Multi-Service Center. (Chavez) (Orders of the Day)**

Action: Council Member Chavez and Mayor Gonzales presented commendations to Helen Hansen, Angie Pratt and Diane Sign in honor of St. John XXIII Multi-Service Center's 40<sup>th</sup> Anniversary.

- 1.8 Presentation of a commendation to John XXII Multi-Service Center for their forty years of hard work and commitment to the improvement of the lives in our senior community. (Chavez)  
(Orders of the Day)**

Action: Heard with Item 1.7.

- 1.1 Presentation of a proclamation declaring the week of May 16-22, 2004 as Public Works Week. (Public Works)**

Action: Mayor Gonzales presented a proclamation to Director of Public Works Katy Allen declaring May 16 – 22 as Public Works Week. Deputy City Manager for Capital Projects, Terry Roberts presented a brief overview of Public Work projects. The Mayor recognized the following department heads: Director of Public Works Katy Allen, Director of Aviation Services Ralph Tonseth, Director of Environmental Services, Carl Mosher, Director of General Services Jose Obregon, Director of Transportation Jim Helmer, Library Director Jane Light and Director of Parks, Neighborhoods and Recreation Sara Hensley, Chief of Police Rob Davis and Fire Chief Jeff Clet for their hard work and efforts. Staff presented a video overview of recently completed capital improvements projects.

## **CONSENT CALENDAR**

Upon motion by Vice Mayor Dando, seconded by Council Member Chavez and unanimously carried, the Consent Calendar was approved and the below listed actions taken as indicated. (11-0).

### **2.2 Final adoption of ordinances:**

- (a) **ORD. NO. 27136 - Amends Title 4 of the San José Municipal Code to add a new Chapter 4.06 and amending various sections of Title 4 to establish contracting preferences for local and small businesses.**

Documents Filed: Proof of publication of title of Ordinance No. 27136 executed on May 11, 2004, submitted by the City Clerk.

Public Comments: William Garbett spoke in opposition to the ordinance.

Action: Ordinance No. 27136 was adopted. (11-0).

- (b) **ORD. NO. 27140 - Prezones certain real property situated on the east side of Noble Lane approximately 550 feet northerly of Noble Avenue to R-1-5 Single-Family Residence Zoning District. C 04-003**

Documents Filed: Proof of publication of title of Ordinance No. 27140 executed on May 11, 2004, submitted by the City Clerk.

Action: Ordinance No. 27140 was adopted. (11-0).

## 2.2 (Cont'd.)

- (c) **ORD. NO. 27141 - Rezones certain real property situated on the southwest corner of Lewis Road and Wall Street (202 Lewis Road) to A(PD) Planned Development Zoning District. PDC 04-013**

Documents Filed: Proof of publication of title of Ordinance No. 27141 executed on May 11, 2004, submitted by the City Clerk.

Action: Ordinance No. 27141 was adopted. (11-0).

## 2.3 **Approval to award the purchase of a Commute-a-Walk covered moveable passenger walkway to Infra-Structures, Inc., as a sole source purchase, for the total cost of \$155,636.58 including tax, delivery, and installation, and authorizing the Director of General Services to execute the purchase order. CEQA: Resolution Nos. 67380 and 71451, PP 04-04-138. (General Services)**

Documents Filed: Memorandum from Director of General Services Jose Obregon, dated April 28, 2004, recommending the award of the purchase orders.

Public Comments: William Garbett spoke in opposition to the said award.

Action: The purchase was approved and the execution of purchase orders authorized. (11-0).

## 2.4 **Approval of an award as a sole source purchase of twenty-one (21) Limitorque valve actuators to McJunkin Corporation for a total cost of \$134,826.46, including tax and delivery, and authorizing the Director of General Services to execute the purchase order. CEQA: Not a Project. (General Services)**

Documents Filed: (1) Memorandum from Director of General Services Jose Obregon, dated April 28, 2004, recommending approval of said award to McJunkin Corporation. (2) Letter from the Treatment Plant Advisory Committee, dated May 17, 2004, recommending approval of Staff's recommendations.

Action: The purchase with McJunkin Corporation was approved and execution of purchase orders were authorized. (11-0).

## 2.5 **Report on Request for Quotation (RFQ) and authorize the Director of General Services to execute a one-year service order with Allied Waste (BFI) for hauling and disposal of grease, grit, and screenings for a total cost of \$150,000.**

- (a) **Approve four one-year options to renew without further Council approval other than the appropriation of funds.**

**CEQA: Exempt, PP04-03-069. (General Services)**

## 2.5 (Cont'd.)

Documents Filed: (1) Memorandum from Director of General Services Jose Obregon, dated April 28, 2004, recommending approval of the Report on Request for Quotation. (2) Letter from the Treatment Plant Advisory Committee, dated May 17, 2004, recommending approval of Staff's recommendations.

Discussion: Council Member Chavez requested the City Manager to have the City Auditor review expenditures prior to approving one-year options and to ensure materials are being disposed of properly.

Action: Upon motion by Council Member Chavez, seconded by Vice Mayor Dando and unanimously carried, the Report on Request for Quotation (RFQ) was approved and execution of a one-year service was authorized. (11-0).

- 2.6 Report on bids and award of contract for the purchase of two 32,000 pound dredges to the low bidder, Liquid Waste Technology, Inc., at a total cost of \$436,624.50 including tax, freight, and extended engine warranty, and authorize the Director of General Services to:**
- (a) Execute the purchase order for the immediate purchase of two dredges; and**
  - (b) Approve a contingency of 5% for any unforeseen engineering changes that may arise.**

**CEQA: Not a Project. (General Services)**

Documents Filed: (1) Memorandum from Director of General Services Jose Obregon, dated April 28, 2004, recommending approval of report on bids and award. (2) Letter from the Treatment Plant Advisory Committee, dated May 17, 2004, recommending approval of Staff's recommendations.

Action: The report on bids and award to low bidder, Liquid Waste Technology, Inc., was approved and execution of purchase orders authorized. (11-0).

- 2.7 Adoption of a resolution authorizing the Director of General Services to:**
- (a) Negotiate and execute an amendment to the agreement with Schindler Elevator Corporation to increase the scope of services to include terminals A and C, and to increase the maximum compensation from \$28,423 to an amount not to exceed \$145,623.**
  - (b) Execute two, one-year options to renew without further Council approval other than the appropriation of funds.**

**CEQA: Not a Project. (General Services)**

Documents Filed: Memorandum from Director of General Services Jose Obregon, dated April 28, 2004, recommending adoption of said resolution.

Action: Resolution No. 72103, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of General Services to Negotiate and Execute an Amendment to the Agreement with Schindler Elevator Corporation for Elevator and Escalator Maintenance at San José International Airport", was adopted. (11-0).

- 2.8 Approval of an amendment to extend the agreement with San José Water Company (SJWC) for Recycle Plus bill printing and remittance processing services for 12 months, from July 1, 2004 to June 30, 2005, with two one-year extension options upon written notice from the Director of Environmental Services; the amendment would also revise the compensation provision by .005 cents per bill, in the event the agreement is extended beyond June 30, 2005. CEQA: Not a Project. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services, Carl Mosher, dated April 28, 2004, recommending approval of said amendment.

Public Comments: Ross Signorino spoke in opposition to the amendment.

Discussion: Council Member Chavez requested Staff to return with additional information upon receipt of the C.Y.S.P., per Council action.

Action: The amendment was approved. (11-0).

- 2.9 Approval of an ordinance amending Section 9.10.1630 of Chapter 9.10 of Title 9 of the San José Municipal Code to delete a requirement regarding customer arrearages in cases where commercial waste generators desire to change franchised commercial collection companies. CEQA: Not a Project. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services, Carl Mosher, dated April 28, 2004, recommending approval of the ordinance.

Public Comments: Jeannie Short spoke in opposition to said ordinance.

Motion: Council Member LeZotte moved approval of the staff recommendation, seconded by Council Member Gregory.

Discussion: Vice Mayor Dando requested Staff to provide a status report to Council in one year.

Action: On a call for the motion, Ordinance No. 27148, entitled: “An Ordinance of the City of San José Amending Section 9.10.1630 of Chapter 9.10 of Title 9 of the San José Municipal Code to Delete a Requirement Related to Customer Arrearages in Cases Where Commercial Waste Generators Desire to Change Franchised Commercial Collection Companies”, was passed for publication. (11-0).

- 2.10 Approval of a continuation agreement with Strategic Economics to continue the term of their consultant agreement from December 31, 2003 to June 30, 2004, to revise the scope of work to reflect additional work of data collection and processing for use in the fiscal impact model, and to increase the total compensation by \$10,548, from \$139,452 to \$150,000. CEQA: Not a Project. (Planning, Building and Code Enforcement)**

## 2.10 (Cont'd.)

Documents Filed: Memorandum from Director of Planning, Building & Code Enforcement Stephen Haase, dated May 5, 2004, recommending approval of the continuation agreement with Strategic Economics.

Action: The continuation agreement with Strategic Economics was approved. (11-0).

- 2.11 (a) **Adoption of a resolution initiating proceedings and setting June 1, 2004 at 1:30 p.m. as the date for Council consideration of the reorganization of territory designated as McKee No. 123, which involves the annexation to the City of San José of 0.14 acre of land more or less, located at the west side of Pala Avenue, approximately 60 feet northerly of Avenue A and adjacent to the City of San José annexation McKee No. 100, and the detachment of the same from County Lighting County Services, Central Fire Protection, Area No. 1 (Library Services) County Service and County Sanitation District 2-3. CEQA: GP2020 Resolution No. 65459, C03-081. Council District 5. (Planning, Building and Code Enforcement)**
- (b) **Adoption of a resolution initiating proceedings and setting June 1, 2004 at 1:30 p.m. as the date for Council consideration of the reorganization of territory designated as McKee No. 125, which involves the annexation to the City of San José of 0.11 acre of land more or less, located at the south side of Summit Avenue, approximately 140 feet easterly of Kirk Avenue and adjacent to the City of San José annexation McKee No. 40, and the detachment of the same from County Lighting County Services, Central Fire Protection, Area No. 1 (Library Services) County Service and County Sanitation District 2-3. CEQA: GP2020 Resolution No. 65459, C03-095. Council District 5. (Planning, Building and Code Enforcement)**

Documents Filed: (1) Memoranda from Director of Planning, Building & Code Enforcement Stephen Haase, dated April 28, 2004, recommending adoption of said resolutions.

Action: Resolution No. 72105, entitled: "Resolution of the Council of the City of San José Initiating Reorganization Proceedings for the Annexation and Detachment of Certain Uninhabited Territory Designated as McKee No. 123 and Described Herein, and Setting the Date and Place for Consideration of Such Reorganization", was adopted. (11-0). Item 2.11(b) was dropped.

- 2.12 **Recommendation: Appoint Andre Barne, Chief of Police for San José State University, to the Civic Plaza Parking and Traffic Committee (PTC) as the San José State University Staff committee member. CEQA: Not a Project. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated April 28, 2004, recommending the said appointment.

Action: The said appointment was approved. (11-0).

- 2.13 (a) **Approval of an agreement for a transfer of easements located at 3434 Silver Creek Road, from the East Side Union High School District to the City for placement of traffic signals near Silver Creek High School, and authorization to the Director of Public Works to execute all documents related to acceptance of the easements. CEQA: Exempt, PP02-07-197. Council District 8. (Public Works)**
- (b) **Report on bids and award of contract for the Traffic Signal Installation at Colt Way and Silver Creek Road Project to the low bidder, Pacific Electric Company, in the amount of \$148,570.50, and approval of a contingency in the amount of \$14,850. CEQA: Exempt, PP02-07-197. Council District 8. (Public Works/Transportation)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated April 28, 2004, recommending approval of said agreement. (2) Memorandum from Director of Public Works Katy Allen and Director of Transportation, James R. Helmer, dated April 28, 2004, recommending said report on bids and said award of contract with related contingency.

Action: The agreement was approved and the contract awarded. with related contingency. (11-0).

- 2.14 **Approval of an ordinance amending Chapter 11.48 of Title 11 of the San José Municipal Code to expand the University residential permit parking zone. CEQA: Exempt, PP04-03-109. Council District 3. (Transportation)**

Documents Filed: Memorandum from Director of Transportation, James R. Helmer, dated April 29, 2004, recommending approval of said ordinance.

Public Comments: William Garbett spoke in opposition to the ordinance.

Action: Ordinance No. 27147, entitled: “An Ordinance of the City of San José Amending Chapter 11.48 of Title 11 of the San José Municipal Code to Permanently Add A Total of Three (3) Additional Block Segments to the University Residential Permit Parking Area”, was passed for publication. (11-0).

- 2.15 **Acceptance of the finding reports from Kafoury, Armstrong, & Company, LLP of the quarter ending December 31, 2003, relating to Bay 101 Conditional Approval of Stock Transfer. (City Auditor)  
(Rules Committee referral 5/12/04)**

Documents Filed: Memorandum from City Auditor, Gerald Silva, dated May 7, 2004, transmitting the finding reports from Kafoury, Armstrong, & Company, LLP.

Action: The reports were accepted. (11-0).



- 2.16 Adoption of a resolution authorizing the City Manager to negotiate and execute a first amendment to the agreement with The Campbell-Hill Aviation Group, Inc., for air service development consultant services for Norman Y. Mineta San José International Airport, increasing the compensation by \$30,000 in the current fiscal year (final option year), for a total amount not to exceed \$220,000, and extending the term of the agreement from June 30, 2004 to July 31, 2004. CEQA: Not a Project. (Airport)  
(Rules Committee referral 5/12/04)**

Documents Filed: Memorandum from Aviation Director Ralph G. Tonseth, dated May 12, 2004, recommending approval of the first amendment.

Action: Resolution No. 72104, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a First Amendment to the Agreement with Campbell-Hill Aviation Group, Inc. for Air Service Development Consultant Services for the Norman Y. Mineta San José International Airport Increasing the Compensation by adopted. (11-0).

## **STRATEGIC SUPPORT SERVICES**

### **3.2 Report of the Rules Committee – May 5, 2004**

Vice Mayor Dando, Chair

Documents Filed: (1) The Report of the Rules Committee of May 5, 2004. (2) Memorandum from Council Member Cortese, dated May 18, 2004, recommending the revision of the Building Better Transportation Committee workplan for the June 7, 2004 meeting as contained therein.

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting
- (b) City Council
  - (1) Review May 18, 2004 Draft Agenda.  
The Committee recommended approval of the May 18, 2004 City Council agenda with three additions and one deletion.
  - (2) Add New Items to May 11, 2004 Amended Agenda
    - Mayor and Council Member Requests
    - City Manager Requests
    - City Attorney Requests
    - City Clerk RequestsThe Committee recommended one addition to the May 11, 2004 City Council agenda.
  - (3) List of Reports Outstanding. Attachment: Report from the City Manager's Office, dated May 4, 2004, listing one staff report outstanding for the May 11, 2004 Council agenda. Attachment: Report from the City Manager's Office, dated May 4, 2004 listing one staff report outstanding for the May 11, 2004 Council agenda.

### 3.2 (Cont'd.)

The Committee noted and filed the City Manager's report stating there is one staff report outstanding for the May 11, 2004 Council agenda.

- (c) Legislative Update
  - (1) State
    - (a) Voting delegate for a special meeting of the League of California Cities General Assembly on May 13.  
HEARD BY COUNCIL ON 5/11/04

- (2) Federal  
There was no report.

- (d) Meeting Schedules – There were none.

- (e) The Public Record. Attachment: Memorandum from Acting City Clerk Deanna J. Santana, dated April 29, 2004, transmitting items filed for the Public Record for the period April 21 – 27, 2004.

The Committee noted and filed the Public Record.

- (f) Appointment to Boards, Commissions and Committees – There were none.

- (g) Rules Committee Reviews, Recommendations and Approvals.
  - (1) Results of outreach and negotiation for “Evergreen Specific Plan Construction Tax, Building and Structures Tax, and Residential Construction Tax Fee Suspension/Exemption Renewal. Attachment: Memorandum from Deputy City Manager Ed Shikada, dated May 5, 2004, providing an update regarding discussions with Evergreen Specific Plan property owners”.

The Committee accepted the City Manager's report and continued this item to next week's Rules Committee meeting.

- (2) Written report regarding the Public Art Process for the Norman Y. Mineta San José International Airport. Attachment: Memorandum from Acting Director of Conventions, Arts & Entertainment Jim McBride, dated April 29, 2004, recommending acceptance of his report regarding the Public Art Process for the San José Mineta International Airport.

### 3.2 (Cont'd.)

The Committee directed staff to return next week with a verbal update on the timeline for reporting back on the following issues to Rules Committee:

- Examine the square footage of the new Airport terminal.
- Obtain an update on the staffing of the Public Art Program.
- Facilitate an expanded, meaningful community involvement process that includes Council involvement in the Airport Public Art Master Plan.
- Improve the process for an expanded community role in the arts process.
- Provide the Council with a refined budget for Public Art at the Airport.
- Provide Council with a status of expenditures to date.
- Give Council an update on the involvement and strategies for involving local artists.
- Expand principles developed for art at the Airport to all City arts programs.
- Provide Rules Committee with a presentation on the City's current art policy.

- (3) Revisions to Building Better Transportation Committee's Workplan. Attachment: Memorandum from Council Member Cortese, dated April 29, 2004, recommending a revision to the June 7, 2004 Building Better Transportation Committee meeting agenda.

The Committee recommended amending the Building Better Transportation Committee workplan to include High Speed Rail Alignment and Caltrain Electrification for the June 7, 2004 meeting.

- (h) Oral communications  
None were presented.

- (i) Adjournment  
The meeting adjourned at 2:50 P.M.

Action: Upon motion by Vice Mayor Dando, seconded by Council Member Cortese, and unanimously carried, the Rules Committee report and actions were accepted with the revision of the Building Better Transportation (BBT) Committee's Work Plan from Mayor Gonzales and Council Member Cortese' memorandum, dated May 18, 2004, recommending the revision of the BBT Committee work plan for the June 7, 2004 meeting as follows: 1) Expansion and improvement of Transit and Transportation Systems; a) Design Options for Capital Expressway Light Rail Project, 2) Traffic Relief/Safe Streets; a) Business District Streetscape Implementation and Maintenance

### 3.2 (Cont'd.)

Report (deferred from May 2004 meeting), 3) Supporting Smart Growth; a) No items, 4) Regional Relationship/Funding Policy; a) High Speed Rail Alignment and Caltrain Electrification and Regional Prioritization, and Staff was directed to refer Item 1(a) of said memorandum to the Monday Mayor's meeting before returning to Council. (11-0).

### 3.4 **Report on bids and award of contract for the San José Civic Center Window Coverings Project to the sole bidder, Peninsulators, Inc., in the amount of \$174,000, and approval of a contingency in the amount of \$17,400. CEQA: Civic Plaza Redevelopment Plan, Resolution No. 68905, PP98-03-072. SNI: University. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated April 28, 2004, recommending said report on bids and said award of contract with related contingency.

Public Comments: William Garbett spoke in opposition to the award.

Discussion: Council Member Williams requested Staff to check the contractor's references.

Action: Upon motion by Council Member Williams, seconded by Vice Mayor Dando, and unanimously carried, the report on bids and award of contract were approved, with related contingency. (11-0).

### 3.5 **Approval of an interim space use plan, including an associated financing plan for its implementation to provide space for staff not relocating to the New City Hall. CEQA: Not a Project. (General Services)**

Documents Filed: None.

Action: This item was dropped.

### 3.6 **PUBLIC HEARING on the Proposed Operating and Capital Budgets for the Fiscal Year July 1, 2004 to June 30, 2005, the Proposed Five-Year Capital Improvement Program for 2005-2009, and the Proposed Fiscal Year 2004-2005 City Departmental Fees and Charges Program for the City of San José. (City Manager's Office) (Rules Committee referral 5/12/04)**

Heard in the evening

Documents Filed: (1) Proof of publication of Notice of Public Hearing, executed on April 30, 2004, submitted by the City Clerk. (2) Letter from the Vice-President of the Hyde Park Neighborhood Association Mark Wheeler, opposing fee increases for Residential Permit Parking. (3) Letter from President of the Association of Engineers and Architects (AEA) Mary Follenweider and Executive Director of the International Federation of Professional and Technical Engineers David Novogrodsky, dated May 18, 2004,

### 3.6 (Cont'd.)

opposing the Capital Improvement Budget and for the deferral of the Major Bond Projects. (4) Community petitions opposing the closures of the McKinley and Olinder Community Centers. (5) 51 Letters opposing the closures of local community centers. (6) Letter from the South Almaden Valley Rural Alliance opposing the building of the Almaden Valley Sports Complex. (7) Letter from the Santa Clara & San Benito Counties Building & Construction Trades Council opposing the deferral of approved and funded capital projects in the proposed 2005-2009 Capital Improvement Program.

Public Comments: Mayor Gonzales opened the Public Hearing. The following people spoke in opposition of the potential closure of local Community Centers, including McKinley and Olinder Neighborhood Centers: Ruben H. Soto, Victor G. Everett, Eva Chavez Martinez, Jose Villanueva, Gerri L. Garcia, Robert Winchester, Lillian Lee, Octavio Lopez, Robert Gronechon, Joan Rivas-Cosby, Rita Espino, Reina Figueroa, Ariana Montes, Luisa Chavarin, Neelam Pathikonda, Savra Maurice Adams, Maria Angeles Reyes, Maria Lopez, Cecilia Ceballos, Mireya Huerta, Trinidad Lopez, Ana Pacheco, and Elvira Bustamante.

Ronald Schwartz spoke in opposition to cutting senior citizen services.

Brenda Hofherr and Margaret Bruce spoke in opposition to proposed Hazardous Incident Prevention Fee.

Beth Shafran-Mukar and Elizabeth Monley spoke in opposition to budget cuts affecting community services.

Melvin Meeks spoke in opposition to Permit Parking fees.

Chris Dailey and Neil Struthers spoke in opposition to delaying Capital Improvement Projects.

Mayor Gonzales closed the Public Hearing. The next Public Hearing on the budget will be June 14, 2004 at 7:00 P.M..

## ECONOMIC & NEIGHBORHOOD DEVELOPMENT

### 4.3 Adoption of a resolution:

- (a) **Authorizing staff to negotiate an agreement with the FMC Corporation for the purchase of 74.87 acres of property located at 1125 Coleman Avenue, at a price of \$81,533,430 in accordance with a "Terms Sheet" that has been previously negotiated between the City and FMC staff; and**
- (b) **Directing staff to bring the finalized agreement back to the City Council for consideration; and**
- (c) **Directing staff to pursue a Section 108 loan to support the purchase of 23.23 acres of the FMC property; and**
- (d) **Directing staff to pursue a Brown Fields Economic Development Initiative Grant in an amount not to exceed \$2 million to support the development of the FMC property.**

**CEQA: Resolution No. 71716, PDC98-12-104. (Economic Development/Airport)**

#### **4.3 (Cont'd.)**

Documents Filed: Memorandum from Director of Economic Development, Paul Krutko and Aviation Director Ralph G. Tonseth, dated May 13, 2004, recommending the adoption of said resolution.

Public Comments: William Garbett spoke in opposition to the purchase.

Action: Resolution No. 72106, entitled: “ A Resolution of the Council of the City of San José: (1) Authorizing Staff to Negotiate an Agreement with the FMC Corporation for the purchase of 74.87 Acres of Property Located at 1125 Coleman Avenue at a Price of \$81,539,960 in Accordance with a “Terms Sheet” Worked Out Between the Parties; and (2) Directing Staff to Bring a Finalized Agreement Back to the City Council for Consideration; and, (3) Directing Staff to Pursue a Section 108 Loan to Support the Purchase of 23.23 Acres of FMC Property; and (4) Directing Staff to Pursue a Brown Fields Economic Development Initiative Grant to Support the Development of the FMC Property”, was adopted. (11-0).

### **RECREATION & CULTURAL SERVICES**

#### **5.1 Report of the All Children Achieve Committee – Special Meeting of May 6, 2004** Council Member Yeager, Chair

Documents Filed: The All Children Achieve Committee report of May 6, 2004.

- (a) Report on K-12 Student Usage at the City of San José/San José State University Joint Library. Attachment: Memorandum from Library Director Jane Light, dated April 23, 2004, recommending acceptance of the report on K-12 Student Usage at the City of San José/San José State University Joint Library.

The Committee accepted the report.

- (b) Update on Parent Institute for Quality Education. Attachment: Memorandum from Director of Parks, Recreation & Neighborhood Services Sara Hensley, dated April 23, 2004, recommending acceptance of the status report on Parent Institute for Quality Education (PIQE) services.

The Committee accepted the report.

- (c) Update on Early Care and Education Youth program Budget Priorities. Attachment: Memorandum from Director of Parks, Recreation & Neighborhood Services Sara Hensley and Library Director, Jane Light, dated April 23, 2004, providing a status report on the strategy to merge Parks, Recreation and Neighborhood Services’ Office on Early Care and Education Services and the San José Public Library’s Partners in Reading Program.

The Committee accepted the report.

## 5.1 (Cont'd.)

- (d) Oral Petitions –There were none.
- (e) Adjournment –The meeting was adjourned at 3:02 P.M.

Action: Upon motion by Council Member Yeager, seconded by Council Member Chavez, and unanimously carried, the All Children Achieve Committee report and actions of May 6, 2004 were accepted. (11-0).

## 5.2 Adoption of a resolution to:

- (a) **Authorize the City Manager to accept an Irrevocable Offer of Dedication of parkland from LB/L-KB Saddlerack, LLC, for park purposes;**
- (b) **Authorize the City Manager to negotiate and execute a Turnkey Park Agreement with LB/L-KB Saddlerack LLC, for Planned Development Permit PD 02-036; and**
- (c) **Direct staff to proceed with the construction of a public restroom in O'Connor Park at the location indicated on the Proposed Concept Plan.**

**CEQA: Housing and park development - Negative Declaration, PDC02-030. Restroom Project - NEPA, Categorically Excluded per 58.35(a). Council District 6. SNI: Burbank/Del Monte. (Parks, Recreation and Neighborhood Services**

Documents Filed: (1) Memorandum from Council Member Yeager, dated May 18, 2004, recommending said resolution as amended; (c) Delay final decision on a restroom but direct staff to include as part of the turnkey agreement the construction of the infrastructure for a future, sole 8 foot by 8 foot single-occupancy restroom, which meets ADA requirements, is designed in the same architectural style as the KB clubhouse, and is constructed with graffiti resistant material. (2) Memorandum from Director of Parks, Recreation & Neighborhood Services Sara Hensley, dated May 3, 2004, recommending said resolution. (3) Letter from the Chair of the Parks and Recreation Commission Elisa Koff-Ginsburg, dated May 3, 2004, in support of the turnkey agreement for the Southern portion of O'Connor Park. (4) Letter and petitions from the Crescent Parc Community, Incoming Kaufman Broad Residents, Park View Residents, and San José Residents-at-large, dated May 13, 2004, opposing the building of a new public bathroom in O'Connor Park. (5) Hardcopy photo of the KB Midtown Plaza condominiums.

Public Comments: The following people spoke in opposition of building a restroom at O'Connor Park: Mark Swineford, Ken Henning, Randi Kinmay, Robert Solis, Joe Carpenter, Norma Ruiz, Laura Colunga, Ashlee Oh, Tom Fuge, Steven Wilson, Sonia Azevedo, and Ron Bierman.

Action: Resolution No. 72107, entitled: "Resolution of the Council of the City of San José Authorizing the City Manager to Accept an Irrevocable Offer of Dedication of Parkland From LB/L-KB Saddlerack, LLC, and to Negotiate and Execute a Turnkey Park Agreement with LB/L-KB Saddlerack, LLC, for Planned Development Permit PD02-036 and Direct City Staff to Delay the Final Decision Regarding Construction of a Public Restroom in O'Connor Park", was adopted as amended. (11-0).

## **TRANSPORTATION SERVICES**

### **6.1 Report of the Building Better Transportation Committee – May 3, 2004** Council Member Cortese, Chair

Documents Filed: The Building Better Transportation Committee report and actions of May 3, 2004.

- (a) Expansion and Improvement of Transit and Transportation Systems.
  - (1) Report on the Transportation and Aesthetic Design Improvements Outside of the Norman Y. Mineta San José International Airport. Attachment: Memorandum from Aviation Director Ralph G. Tonseth and Director of Transportation, James R. Helmer, dated April 23, 2004, transmitting the Airport Aesthetics Development Update.

The Committee unanimously accepted the report.

- (2) Report on Bay Area Rapid Transit (BART) Environmental Analysis Final Recommendations. Attachment: Memorandum from Director of Transportation, James R. Helmer, dated April 22, 2004, recommending approval of the final alignment and station configurations for the San José portion of the BART project and forward a recommended City position for City Council action on May 18, 2004.

SEE ITEM 6.2 FOR COUNCIL ACTION TAKEN

- (b) Traffic Relief/Safe Streets
  - (1) Business District Streetscape Implementation and Maintenance Report, presentation and direction to move forward with next steps in the potential formation of a Property Business Improvement District, in the Downtown Core and Neighborhood Business Districts

The Committee deferred the report.

- (c) Supporting Smart Growth
  - (1) No items
- (d) Regional Relationships/Funding/Policy
  - (1) Update on State, Federal, and Local Legislative. Attachment: Memorandum from Director of Transportation, James R. Helmer and Director of Intergovernmental Relations Betsy Shotwell., dated April 16, 2004, recommending acceptance of the Legislative Report.

The Committee unanimously accepted the report.

- (e) Oral petitions –There were none.
- (f) Adjournment –The Committee was adjourned at 2:25 P.M.



## 6.1 (Cont'd.)

Action: Upon motion by Council Member Cortese, seconded by Council Member Chavez, and unanimously carried, the Building Better Transportation Committee report and actions were accepted. (11-0).

## 6.2 **Approval of City recommended alignment and station configurations for the San José portion of the BART Project. (Transportation)** **[Building Better Transportation Committee referral 5/3/04 – Item 6.1(a)(2)]**

Documents Filed: (1) Memorandum from Senior Executive Analyst, Nadine Nader, dated May 12, 2004, transmitting the BART alignment and station configurations staff report. (2) Hardcopy powerpoint staff presentation of the BART Extension Project to San José/Silicon Valley, dated May 18, 2004.

Public Comments: William Garbett spoke in opposition of the proposed recommendation.

Gary Schoennauer, and Alex Marthews spoke in support of the staff recommendation.

Motion: Council Member Chavez moved approval of staff recommendation with additional direction, seconded by Vice Mayor Dando.

Discussion: Mayor Gonzales proposed an amendment to the motion by suggesting that the Council defer for 30 days consideration of the configuration of the Berryessa Station and direct staff to study options that would ensure no net reduction of parking and no displacement of parking to the Alum Rock Station. The amendment was accepted.

Vice Mayor Dando requested Staff to provide Council with more information pertaining to the appraisal process used for the BART project.

Action: On a call for the question, the staff recommendation was approved, as amended. (11-0).

## 6.3 (a) **Approval to proceed with implementation of the proposed Taxicab Service Model with an implementation date of February 1, 2005.** (b) **Adoption of a resolution authorizing the City Manager to execute an extension to the Airport Taxicab Concession Agreements with Yellow Checker Cab Company, Inc. and United Taxicab Corporation that expire on September 27, 2004 until January 31, 2005.**

**CEQA: Not a Project. (Transportation/Police/Airport)**

**[Building Better Transportation Committee referral 4/5/04 – Item 6.1(a)(1)]**

**(Deferred from 5/4/04 – Item 6.2 and 5/11/04 – Item 6.2)**

Documents Filed: (1) Memorandum from Council Member Cortese, Council Member LeZotte and Council Member Chavez, dated May 18, 2004, recommending the adoption of staff's recommendation with modifications contained therein. (2) Supplemental memorandum from Director of Transportation, James R. Helmer, dated April 30, 2004, providing information requested by Council Member Cortese and the City Council for the Taxicab Service Model Study. (3) Memorandum from Director of Transportation, James

### 6.3 (Cont'd.)

R. Helmer, Deputy Chief of Police Bureau of Investigations Rob Davis and Aviation Director Ralph G. Tonseth, dated April 27, 2004, recommending proceeding with implementing the proposed Taxicab Service Model Study. (4) Hardcopy staff powerpoint presentation of the Taxicab Regulatory and Service Model Study from the San José Convention and Visitors Bureau Schaller Consulting, dated May 4, 2004. (5) Letter from President of United Cab Company Therese Maloney and President/GM Yellow Checker Cab Company Larry Silva, dated May 18, 2004, opposing the proposed modifications to the staff recommendations proposed by Council Member Cortese. (6) Letter from President of Yellow Checker Cab Company Larry Silva, dated May 3, 2004, opposing staff recommendations.

Motion: Council Member Cortese moved approval of staff's recommendation with additional modifications contained within his memorandum, dated May 18, 2004, seconded by Council Member LeZotte.

Public Comments: The following people spoke in support of Council Member Cortège' memorandum: Ron Lind, Philip Bump, Ali Ali, Pankaj Kumar, Durraveli Irbal, Seyioum Asrat, Scott Strickland, Denise Jan, Bikram Jeet Singh, Ranjit, Zora Singh, Dave Logan, Larry Silva, Therese Maloney, and Aaron Morrow.

Mola Gebeye spoke in opposition to both staff and Council Member Cortese' recommendations.

Discussion: Council Member Chirco stated she would not support the motion due to the lack of time available for her to review the proposed memorandum from Council Member Cortese and the changes contained within it.

Action: On a call for the question, the implementation of the proposed Taxicab Service Model was approved with modifications contained in Council Member Cortese memorandum, dated May 18, 2004. No Council action was taken on the proposed resolution. (10-1). Noes: Chirco.

## AVIATION SERVICES

### 8.1 **Approval to reject all bids for the Norman Y. Mineta San José International Airport North Concourse Building Site Preparation and Excavation (Package 1) Project and authorization for the Director of Public Works to readvertise and rebid the project. CEQA: Resolution Nos. 67380 and 71451, PP 04-03-092. (Public Works/Airport) (Deferred from 5/4/04 – Item 8.1 and 5/11/04 – Item 8.1))**

Documents Filed: (1) Supplemental memorandum from Director of Public Works Katy Allen, dated May 13, 2004, providing additional information regarding staff's recommendation. (2) Memorandum from City Attorney Richard Doyle, dated May 11, 2004, responding to the bid protest. (3) Memorandum from Director of Public Works

## **8.1 (Cont'd.)**

Katy Allen and Aviation Director Ralph G. Tonseth, dated May 5, 2004, recommending approval of the rejection of all bids. (4) Letter from General Counsel Michael Willcoxon, Esq, dated April 23, 2004, providing a written protest of the Norman Y. Mineta San José International Airport North Concourse Building Project, Package 1 – Site Preparation and Excavation.

Public Comments: Grant Rhodes, Tom Collins, and Michael Willcoxon representing De Silva Gates Construction.

Ross Signorino and John Roe, representing Malcolm Drilling spoke in opposition of the recommendation and urged the Council to award the contract.

David Kennedy, representing RGW Construction spoke in favor of re-bidding the contract.

Discussion: Vice Mayor Dando stated she would not be supporting the motion and argued in favor of awarding the contract to the low bidder.

Action: Upon motion by Council Member Cortese, seconded by Council Member Reed, and unanimously carried, the rejection of all bids for the Norman Y. Mineta San José International Airport North Concourse Building Site Preparation and Excavation (Package 1) Project was approved. (9-3). Noes: Chavez, Dando, LeZotte.

## **PUBLIC SAFETY SERVICES**

### **9.1 Presentation of the 2003 Independent Police Auditor's Report to City Council. (Independent Police Auditor)**

Documents Filed: Hardcopy of the 2003 Independent Police Auditor's Comprehensive Ten-Year Overview.

Action: Upon motion by Council Member Cortese, seconded by Vice Mayor Dando, and unanimously carried, the Independent Police Auditor's 2003 Comprehensive Ten-Year Overview Report was accepted. (11-0).

## **JOINT COUNCIL/REDEVELOPMENT AGENCY**

### **10.1 Adoption of a resolution establishing a Downtown Design Review Process. CEQA: Resolution No. 65459. Council District 3. (City Manager's Office/Redevelopment Agency) (Council referral 3/16/04 – Item 10.1)**

Documents Filed: None.

Action: This item was deferred to June 1, 2004.

- 10.2 (a) Approve the extension of health and dental employee insurance benefits to the children of domestic partners of current City and Agency employees.**  
**(b) Direct the City Manager to begin the meet and confer process with City bargaining units.**  
**(c) Direct the Redevelopment Agency Executive Director to implement the new policy for current Agency employees.**

**(Mayor)**

**(Rules Committee referral 5/12/04)**

Documents Filed: Memorandum from Mayor Gonzales, dated May 13, 2004, recommending approval of the extension health and dental insurance benefits to the children of domestic partners of current City employees and said direction to the City Manager and Redevelopment Agency Executive Director.

Action: Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and unanimously carried, the extension and direction for the City Manager and Redevelopment Agency Executive Director were approved. (11-0).

- 10.3 Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with Conventions, Sports & Leisure International to provide advisory services on issues related to the sports industry, theater entertainment facilities, and the San José marketplace, in the amount of \$175,000. (City Manager's Office/Redevelopment Agency)**  
**(Rules Committee referral 5/12/04)**

Documents Filed: Memorandum from City Manager Del D. Borgsdorf and Executive Director of the Redevelopment Agency Harry S. Mavrogenes, dated May 17, 2004, recommending adoption of said resolution.

Action: Upon motion by Council Member Cortese, seconded by Vice Mayor Dando, and unanimously carried, Resolution No. 72108, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with Conventions, Sports & Leisure International, Inc. for Advisory Services on Issues Related to the Sports Industry, Theater Entertainment Facilities and the San José Marketplace, in an Amount Not to Exceed \$175,000", was adopted. (11-0).

- 10.4 (a) Approve a Memorandum of Understanding among the City of San José, the Redevelopment Agency, and Hitachi Global Storage Systems, Inc., regarding proposed development of certain real properties located at 5600 Cottle Road and 3403 Yerba Buena Drive; and**  
**(b) Direct staff to negotiate a Development Agreement with Hitachi Global Storage Systems for the combined 5600 Cottle Road and 3403 Yerba Buena Road properties that satisfies the operational and growth needs of Hitachi, meets the requirements of applicable laws, and retains a viable industrial campus in the Edenvale Redevelopment Project Area.**

**CEQA: Not a Project. Council Districts 2 and 8. (City Manager's Office/Redevelopment Agency)**

**(Rules Committee referral 5/12/04)**

#### 10.4 (Cont'd.)

Documents Filed: Memorandum from City Manager Del D. Borgsdorf and Deputy Executive Director of Redevelopment Agency, Harry Mavrogenes, dated May 13, 2004, recommending approval of said Memorandum of Understanding and the direction to staff.

Public Comments: Alex Marthews and Steve McLaughlin spoke in support of the proposed recommendation.

Action: Upon motion by Council Member Williams, seconded by Council Member Cortese, and unanimously carried, the Memorandum of Understanding and direction to staff were approved. (11-0).

- 10.5 (a) Approval of an ordinance by the City Council amending Chapters 14.25 (Park Impact Ordinance) and 19.38 (Parkland Dedication Ordinance) of the San José Municipal Code, in order to continue the suspension of the exemption for units affordable to low-income residents until November 1, 2004, and to extend the Parkland In-Lieu Fee Voucher Program for eligible low-income residential units.**
- (b) Adoption of resolutions by the City Council and the Redevelopment Agency Board approving the Parkland In-Lieu Fee Voucher Program for the payment of subsidized parkland fees for low-income units by the Redevelopment Agency.**

**CEQA: Not a Project. SNI: All. (City Manager's Office/Redevelopment Agency)  
(Rules Committee referral 5/12/04)**

Documents Filed:

Action: This item was deferred to May 25, 2004.

#### **CLOSED SESSION REPORT**

**A. Authority to File an Appeal in Litigation:**

Case Name: Fisher v. City of San José, et al.

Adverse party or parties: Fisher

Substance of litigation: Federal civil rights action alleging an unlawful seizure.

Council Vote: Ayes: Ron Gonzales, Nora Campos, Cindy Chavez, Judy Chirco, Pat Dando, Linda L. LeZotte, Chuck Reed, Ken Yeager and Forrest Williams.

No: David Cortese

Abstain: None.

Not Present: Terry O. Gregory

## **NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS**

In accordance with Sec. 19.16.140d of the San Jose Municipal Code, this is notice of the City Engineer's pending decision on the following Final Maps:

None.

In accordance with Sec. 19.16.140d of the San Jose Municipal Code, this is notice of the City Engineer's receipt of the following Final Maps for review:

None.

## **RECESS/RECONVENE**

The City Council recessed at 6:15 p.m. and reconvened at 7.07 p.m. Council Chambers, City Hall.

Present: Council Members - Campos, Chavez, Chirco, Cortese, Dando, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - Gregory (excused).

City Clerk Lee Price, read the requests for continuances of applications and other actions as recommended. Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and unanimously carried, the below noted continuances were granted. (10-0-1). Absent: Gregory.

### **1.3 Presentation of plaque to Ric Abeyta for 6 years 6 months service on the Downtown Parking Board. (Mayor)**

Action: Mayor Gonzales recognized Rick Abeyta for his serving on the Downtown Parking Board.**1.4 Presentation of commendations to the childcare providers honored at the Children's Fair on April 17<sup>th</sup>, the recipients of the Outstanding Contributor Award for Child Care Center, Agape Child Care, Alfonso and Carmen Cautiverio, owners, and Play N Learn, Tammy Lariz, Director; and the recipient of the Outstanding Contributor Smart Start Program Award, Smart Start San José Children's Center at Overfelt High School, Judy Burgarin, East Side UHSD Child Development Coordinator, Patrice Kelley, Site Supervisor, Sue Cota, Teacher, and Carmen Geniz, Teacher. (Chirco)  
(Rules Committee referral 5/12/04)**

Action: Mayor Gonzales and Council Member Chirco presented commendations to Alfonso and Carmen Cautiverio of the Agape Child Care, Director of the Play N' Learn Tammy Lariz, and Judy Burgarin, Patrice Kelley, Sue Cota, and Carmen Geniz of the Smart Start San José Children's Center at Overfelt High School.

**1.6 Presentation of a commendation to Digital Clubhouse Network's San José Delegation which will be attending the WWII Memorial in Washington, D.C., later this month. (Dando)  
(Orders of the Day)**

Action: Vice Mayor Dando joined Mayor Gonzales presented a commendation to Warren Haig, Anita McFarland, Major Dwight Near (Doc) and Greg Perkins of the Digital Clubhouse Network's San Jose Delegation recognizing them for being selected to go to Washington, D.C. where they will showcase a special project which documents the stories of WWII veterans.**PUBLIC HEARINGS**

**11.1 PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located at the north side of Alum Rock Avenue, approximately 200 feet southwesterly of 34<sup>th</sup> Street (1629 Alum Rock Avenue), from R-2 Two-Family Residence Zoning District and CG Commercial General Zoning District to A(PD) Planned Development Zoning District, to allow a radio station use on a 0.33 gross acre site. (Dolores M. Viera and S. Batista, Owner). CEQA: Exempt. SNI: Five Wounds/Brookwood Terrace. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0).  
PDC 03-090 - District 5  
(Continued from 3/16/04 – Item 11.10 and 4/20/04 – Item 11.1)**

Documents Filed: (1) Memorandum from Secretary of the Planning Commission Stephen Haase, dated May 12, 2004, recommending the adoption of an ordinance rezoning the subject site as proposed by the applicant. (2) Memorandum from Secretary of the Planning Commission Stephen Haase, dated April 28, 2004, transmitting the Department of Planning, Building, and Code Enforcement Staff Report on Project File Number PDC03-090, dated May 6, 2004, recommending approval of the planned development rezoning. (3) Proof of publication of Planning Commission meeting, executed on March 7, 2004, submitted by the City Clerk.

Action: Upon motion by Council Member Campos, seconded by Council Member Chavez, and unanimously carried, Ordinance No. 27149, entitled: "Ordinance of the City San José Rezoning Certain Real Property Situated at the North Side of Alum Rock Avenue, Approximately 200 Feet Southerly of 34<sup>th</sup> Street to A(PD) Planned Development Zoning District", was passed for publication. (10-0-1). Absent: Gregory.

**11.2 PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located at the south side of McKee Road, approximately 200 feet northeasterly of North Capitol Avenue (2740 McKee Road), from CP Commercial Pedestrian Zoning District to A(PD) Planned Development Zoning District, to allow up to 22 single-family attached residential units on a 0.96 gross acre site. (Core Development, Applicant/Manuel Russo Trustee, Owner). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2).  
PDC 03-082 - District 5**

## 11.2 (Cont'd.)

Documents Filed: (1) Memorandum from Secretary of the Planning Commission Stephen Haase, dated April 28, 2004, recommending adoption of an ordinance rezoning the subject site as proposed by the applicant. (2) Department of Planning, Building, and Code Enforcement Staff Report on Project File Number PDC03-082, dated April 8, 2004, recommending approval of the planned development rezoning. (3) Proof of publication of Notice of Public Hearing, executed on March 30, 2004, submitted by the City Clerk

Action: Upon motion by Council Member Campos, seconded by Council Member Chavez, and unanimously carried, Ordinance No. 27150, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated at the Southside of McKee Road, Approximately 200 Feet Northeasterly of North Capitol Avenue to A(PD) Planned Development Zoning District", was passed for publication. (10-0-1). Absent: Gregory.

## 11.3 PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located at the southeast corner of Madden Avenue and North Jackson Avenue (2322 Madden Avenue), from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District, to allow up to 160 single-family attached residences on a 2.3 gross acre site. (David L Falk, William M Strohmeyer et al., Richard Leglu, Alice L Vance et al., Daniel R Solis, Brian Reiser, Dan Ho, Franando Po, Thao Vinh, Owners; David L Falk, Developer). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-0-1). PDC 03-036 - District 5

Documents Filed: (1) Memorandum from Secretary of the Planning Commission Stephen Haase, dated May 13, 2004, recommending the adoption of an ordinance rezoning the subject site as proposed by the applicant. (2) Memorandum from Secretary of the Planning Commission Stephen Haase, dated April 28, 2004, transmitting the Department of Planning, Building, and Code Enforcement Staff Report on Project File Number PDC03-036, dated May 6, 2004, recommending approval of the planned development rezoning. (3) Proof of publication of Notice of Public Hearing, executed on April 16, 2004, submitted by the City Clerk

Action: Upon motion by Council Member Campos, seconded by Council Member Chavez, and unanimously carried, Ordinance No. 27151, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated at the Southeast Corner of Madden Avenue and North Jackson Avenue to A(PD) Planned Development Zoning District", was passed for publication. (10-0-1). Absent: Gregory.

## 11.4 PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located at the north side of Canoas Garden Avenue, approximately 400 feet easterly of Almaden Road (2120 Canoas Garden Avenue), from R-1-8 Residence Zoning District to A(PD) Planned Development Zoning District, to allow up to 5 single-family residences on a 0.33 gross acre site. (Shirley Cl Levitt, Owner; Ms Shirley Lu-Levitt, Developer). CEQA: Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0). PDC 03-078 - District 6



#### 11.4 (Cont'd.)

Documents Filed: (1) Memorandum from Secretary of the Planning Commission Stephen Haase, dated April 29, 2004, recommending the approval of the proposed rezoning. (2) Department of Planning, Building, and Code Enforcement Staff Report on Project File Number PDC03-078, dated April 22, 2004, recommending approval of the planned development rezoning.

Discussion: Council Member Yeager requested staff to exclude the need of the interior sidewalks within their recommendation.

Action: Upon motion by Council Member Yeager, seconded by Council Member Chavez, and unanimously carried, Ordinance No. 27152, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the North Side of Canoas Garden Avenue, 400 Feet Easterly of Almaden Road to A(PD) Planned Development Zoning District", was passed for publication. (10-0-1). Absent: Gregory.

#### 11.5 PUBLIC HEARING ON CONFORMING PLANNED DEVELOPMENT REZONING of the property located at the southeast corner of Market Street and West Julian Street (284 N. Market Street), from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District, to add up to 1,050 square feet of commercial uses to an existing condominium complex containing 98 single-family attached residential units on a 1.77 gross acre site. (Park Townsend LLC, Warren L. Breslow, Owner). CEQA: Resolution No. 68839. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required. PDC 03-097 - District 3

Documents Filed: Department of Planning, Building, and Code Enforcement Staff Report on Project File Number PDC03-097, dated April 27, 2004, recommending approval of the conforming planned development rezoning.

Action: Upon motion by Council Member Chavez, seconded by Vice Mayor Dando, and unanimously carried, Ordinance No. 27153, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated at the Southeast Corner of Market Street and West Julian Street to A(PD) Planned Development Zoning District", was passed for publication. (10-0-1). Absent: Gregory.

#### 11.6 PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located at the north side of Quimby Road, approximately 1,000 feet westerly of South White Road, from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District, to allow up to 37 single-family detached residential units on a 5.0 gross acre site. (Sikh-Gurdwara San José, California, Owner). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-0-1). PDC 04-004 - District 8

## 11.6 (Cont'd.)

Documents Filed: (1) Memorandum from Council Member Cortese, dated May 18, 2004, recommending the proposed staff recommendation with additional level of service (LOS) mitigation contained therein. (2) Memorandum from Secretary of the Planning Commission Stephen Haase, dated May 13, 2004, recommending approval of the proposed rezoning. (3) Memorandum from Secretary of the Planning Commission Stephen Haase, dated April 28, 2004, transmitting the Department of Planning, Building, and Code Enforcement Staff Report on Project File Number PDC04-004, dated May 3, 2004, recommending approval of the subject rezoning.

Motion: Council Member Cortese moved approval of the staff recommendation with additional level of service (LOS) mitigation measures contained within his memorandum, dated May 18, 2004, seconded by Council Member Chavez.2

Action: On a call for the motion, Ordinance No. 27154, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the North Side of Quimby Road, Approximately 300 Feet Easterly of Mission Greens Drive and Approximately 1,000 Feet Westerly of South White Road to A(PD) Planned Development Zoning District", was passed for publication. (10-0-1). Absent: Gregory.

## 11.7 **PUBLIC HEARING ON APPEAL of the Planning Commission's decision to approve, with conditions, a Conditional Use Permit (CUP) for a project located on the south side of San Salvador Street between Market Street and First Street (401 South First Street and 402 South Market Street), on a .28 gross acre site in the DC (Downtown Commercial) Zoning District. The project allows a 16 event concert series where a 22 event concert series was requested, and a three year time limit for the CUP where a five year limit was requested. (Bertram Burns, Owners; Muse Inc., Developer and Appellant). CEQA: Resolution No. 68839. Director of Planning, Building and Code Enforcement recommends to uphold the appeal and approve a Conditional Use Permit for a 22 event concert series as originally applied for, with a term of 5-years and a one-year compliance review; and the Planning Commission recommends approval of a Conditional Use Permit for a total of 16 events, for a term of 3-years and a one-year compliance review (4-1-2).**

### **CP 04-005 - District 3**

Documents Filed: (1) Memorandum from Director of Planning, Building & Code Enforcement Stephen Haase, dated May 6, 2004, recommending approval of the applicant's original project request for a 5-year Conditional Use Permit (CUP), and maintain the Planning Commission's requirement for a 1-year Compliance Review and for the overturn of the Planning Commission's determination and uphold the appeal, including staff's original conditions and findings with a 1-year Compliance Review. (2) Proof of publication of Notice of Public Hearing, executed on May 7, 2004, submitted by the City Clerk

Discussion: Council Member Chavez requested the Planning Director to review events outlined in the Staff recommendation on an annual basis with reference to neighborhood impacts and protective measures.

## 11.7 (Cont'd.)

Action: Upon motion by Council Member Chavez, seconded by Council Member Yeager, and unanimously carried, Ordinance No. 27155, entitled: "Resolution of the City Council of the City of San José Granting, Subject to Conditions, a Conditional Use Permit to Use Certain Real Property Described Herein to Allow Live Entertainment at Outdoor Concerts, with Operation Between the Hours of 7:30 PM and 10:30 PM, on Thursday Nights Through Sunday Nights with Up to 22 Events Per Year, with Service of Alcoholic Beverages Ceasing at 10:00 PM", was passed for publication. (10-0-1). Absent: Gregory.

## 11.8 PUBLIC HEARING ON CONFORMING REZONING of the property located at the west side of Kettmann Road, 100 feet northerly of Dashwood Avenue (3499 Kettmann Road), from A-Agricultural Zoning District to R-1-8 Residence Zoning District, to allow residential uses on a 0.25 gross acre site. (Victor Cunha, Owner). CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required. C 04-009 - District 8

Documents Filed: Department of Planning, Building, and Code Enforcement Staff Report on Project File Number C04-009, dated April 27, 2004, recommending approval of the conforming rezoning.

Action: Upon motion by Council Member Cortese, seconded by Vice Mayor Dando, and unanimously carried, Ordinance No. 27156, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the West Side of Kettman Road 100 Feet Northerly of Dashwood Avenue (3499 Kettman Road) to R-I-8 Residence Zoning District", was passed for publication. (10-0-1). Absent: Gregory.

## 11.9 PUBLIC HEARING ON CONFORMING REZONING of the property located at the west side of Bercaw Lane, approximately 370 feet southerly of Camden Avenue (3621 Bercaw Lane), from CO Commercial Office Zoning District to R-1-8 Residential Zoning District, to allow single-family residential uses on a 0.37 gross acre site. (Brian & Jean S Ho, Owner). CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required. C 04-012 - District 9

Documents Filed: (1) Department of Planning, Building, and Code Enforcement Staff Report on Project File Number C04-023, dated April 27, 2004, recommending approval of the conventional rezoning. (2) Proof of publication of Notice of Public Hearing, executed on April 28, 2004, submitted by the City Clerk

Action: Upon motion by Council Member Chirco, seconded by Council Member Chavez, and unanimously carried, Ordinance No. 27157, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the West Side of Bercaw Lane Approximately 370 Feet Southerly of Camden Avenue (3621 Bercaw Lane) to R-I-8 Residence Zoning District", was passed for publication. (11-0).

**11.10 PUBLIC HEARING ON CONFORMING REZONING** of the property located at the northwest corner of Santa Teresa Boulevard and Cahalan Avenue (6095 Cahalan Avenue), from CP Commercial Pedestrian Zoning District to CN Commercial Neighborhood Zoning District, to allow commercial uses on a 1.8-acre site (existing gasoline service station). (YBM, Inc., Owner/Applicant). CEQA: Resolution 65459. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.  
**C 04-027 - District 10**

Documents Filed: (1) Department of Planning, Building, and Code Enforcement Staff Report on Project File Number C04-027, dated April 26, 2004, recommending approval of the conforming conventional rezoning. (2) Proof of publication of Notice of Public Hearing, executed on May 4, 2004, submitted by the City Clerk. (3) E-mail correspondence, dated May 18, 2004, opposing the proposed rezoning.

Action: This item was deferred to June 1, 2004, as requested by Council.

#### **ADJOURNMENT**

The Council of the City of San José adjourned at 8:39 P.M.

**RON GONZALES, MAYOR**

**ATTEST:**

**LEE PRICE, C.M.C, CITY CLERK**  
EW/5-18-04